

## Internal Revenue Service

Department of the Treasury  
Washington, DC 20224

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Person To Contact:

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Refer Reply To:

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Date:

August 10, 2009

### Legend:

Husband	=
Wife	=
Date 1	=
Date 2	=
GST Trust 1	=
GST Trust 2	=
Son 1	=
Son 2	=
Law Firm	=
<u>a</u>	=
Company	=
Accounting Firm	=
Year 1	=
Year 2	=

Dear \_\_\_\_\_ :

This letter responds to a request from your authorized representative dated February 25, 2009, for an extension of time pursuant to § 2642(g) of the Internal Revenue Code and § 301.9100-3 of the Procedure and Administration Regulations to allocate the generation-skipping transfer (GST) exemptions of Husband and Wife (Taxpayers) to transfers to GST Trust 1 and GST Trust 2.

The facts and representations submitted are summarized as follows. On Date 1, Husband and Wife established two irrevocable trusts, Trust 1 for the benefit of Son 1 and his lineal descendants, and Trust 2 for the benefit of Son 2 and his lineal descendants. Law Firm drafted the trust agreements. Each trust authorizes the trustee to take any actions “to minimize or eliminate any generation-skipping transfer (GST) tax that may be due.” This authority includes directing the personal representatives of the

grantors' estates to allocate their unused GST exemptions to the trust, if appropriate, and dividing the trust into an exempt and non-exempt trust for GST tax purposes.

On Date 2, prior to January 1, 2001, Husband transferred a shares of Company stock to GST Trust 1, and Wife transferred a shares of Company stock to GST Trust 2. Accounting Firm prepared Taxpayers' Forms 709, United States Gift (and Generation-Skipping Transfer) Tax Returns, for Year 1. The returns reported Taxpayers' respective transfers to GST Trusts 1 and 2 and indicated that Taxpayers were electing under § 2513 to treat the transfers as having been made one-half by each spouse. On the returns, the Taxpayers did not allocate any of their available GST exemption to the Date 2 transfers.

In Year 2, Accounting Firm discovered the failure to allocate each respective Taxpayer's available GST exemption to the Date 2 transfers to GST Trusts 1 and 2. It is represented that no distributions have been made from GST Trusts 1 and 2.

Taxpayers have requested an extension of time under § 2642(g) and §§ 301.9100-1 and 301.9100-3 to allocate their respective GST exemption to the Date 2 transfers to GST Trusts 1 and 2.

Section 2601 imposes a tax on every generation-skipping transfer (GST) made by a "transferor" to a skip person. In general, under § 2652(a)(1), the transferor, for GST tax purposes, is defined as the last person with respect to whom the transfer was subject to an estate or gift tax. Section 2652(a)(2) and § 26.2652-1(a)(4) provide that, if, under section 2513, one-half of a gift is treated as made by an individual and one-half is treated as made by the spouse of the individual, then for purposes of the GST tax, each spouse is treated as the transferor of one-half of the entire value of the property transferred by the donor spouse, regardless of the interest the electing spouse is actually deemed to have transferred under section 2513.

Section 2631(a) provides that, for purposes of determining the GST tax, every individual shall be allowed a GST exemption of \$1,000,000 (adjusted for inflation under § 2631(c)) which may be allocated by such individual (or his executor) to any property with respect to which such individual is the transferor. Section 2631(b) provides that any allocation under § 2631(a), once made, shall be irrevocable.

Section 2632(a) provides that any allocation by an individual of his or her GST exemption under § 2631(a) may be made at any time on or before the date prescribed for filing the estate tax return for such individual's estate (determined with regard to extensions), regardless of whether such a return is required to be filed.

Section 26.2632-1(b)(2) of the Generation-Skipping Transfer Tax Regulations provides that an allocation of GST exemption to property transferred during the transferor's lifetime, other than in a direct skip, is made on Form 709.

Section 2642(b)(1) provides, in relevant part, that if the allocation of the GST exemption to any transfers of property is made on a timely filed gift tax return or is deemed to be made under § 2632(b)(1) or (c)(1), the value of such property for purposes of determining the inclusion ratio shall be its value as finally determined for gift tax purposes and such allocation shall be effective on and after the date of such transfer.

Section 2642(g)(1)(A) provides that the Secretary shall by regulation prescribe such circumstances and procedures under which extensions of time will be granted to make an allocation of GST exemption described in § 2642(b)(1). Such regulations shall include procedures for requesting comparable relief with respect to transfers made before the date of the enactment of § 2642(g)(1)(A), which was enacted into law on June 7, 2001.

Section 2642(g)(1)(B) provides that in determining whether to grant relief, the Secretary shall take into account all relevant circumstances, including evidence of intent contained in the trust instrument or instrument of transfer and such other factors as the Secretary deems relevant. For purposes of determining whether to grant relief, the time for making the allocation shall be treated as if not expressly prescribed by statute.

Notice 2001-50, 2001-2 C.B. 189, provides that under § 2642(g)(1)(B), the time for allocating the GST exemption to lifetime transfers is to be treated as if not expressly prescribed by statute. The Notice further provides that taxpayers may seek an extension of time to make an allocation described in § 2642(b)(1) under the provisions of § 301.9100-3.

Section 301.9100-1(c) provides that the Commissioner has discretion to grant a reasonable extension of time under the rules set forth in §§ 301.9100-2 and 301.9100-3 to make a regulatory election, or a statutory election (but no more than 6 months except in the case of a taxpayer who is abroad), under all subtitles of the Internal Revenue Code except subtitles E, G, H, and I.

Section 301.9100-3 provides the standards used to determine whether to grant an extension of time to make an election whose due date is prescribed by a regulation (and not expressly provided by statute). Under § 301.9100-1(b), a regulatory election includes an election whose due date is prescribed by a notice published in the Internal Revenue Bulletin. In accordance with § 2642(g)(1)(B) and Notice 2001-50, taxpayers may seek an extension of time to make an allocation described in § 2642(b)(1) under the provisions of § 301.9100-3.

Requests for relief under § 301.9100-3 will be granted when the taxpayer provides the evidence to establish to the satisfaction of the Commissioner that the taxpayer acted reasonably and in good faith, and that granting relief will not prejudice the interests of the government.

Section 301.9100-3(b)(1)(v) provides that a taxpayer is deemed to have acted reasonably and in good faith if the taxpayer reasonably relied on a qualified tax professional, including a tax professional employed by the taxpayer, and the tax professional failed to make, or advise the taxpayer to make, the election.

Based on the facts submitted and the representations made, we conclude that the requirements of § 301.9100-3 have been satisfied. Husband and Wife are each granted an extension of time of 60 days from the date of this letter to allocate their available GST exemption with respect to the Date 2 transfers to GST Trusts 1 and 2. The allocations will be effective as of Date 2.

The allocations should be made on supplemental Forms 709, United States Gift (and Generation-Skipping Transfer) Tax Return for the year in which the Date 2 transfers were made, and filed with the Internal Revenue Service Center, Cincinnati, Ohio 45999. A copy of this letter should be attached to each supplemental Form 709. A copy is enclosed for this purpose.

The rulings contained in this letter are based upon information and representations submitted by the taxpayers and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

Except as specifically ruled herein, no opinion is expressed or implied concerning the federal tax consequences of any aspect of any transaction or item discussed or referenced in this letter. Specifically we are not ruling on whether GST Trusts 1 and 2 will have zero inclusion ratios as a result of Taxpayers' allocations of GST exemption to the Date 2 transfers to the trusts.

This ruling is directed only to the taxpayers requesting it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

In accordance with a power of attorney on file with this office, a copy of this letter is being sent to your authorized representative.

Sincerely,

Curtis G. Wilson  
Associate Chief Counsel  
(Passthroughs and Special Industries)

Enclosures

Copy for section 6110 purposes  
Copy of this letter

cc: